

TTAB



02-24-2003

U.S. Patent & TMO/tm Mail Rcpt Dt. #0\*

**In The United States Patent and Trademark Office  
Trademark Trial and Appeal Board**

Our Ref: 1092-029.001

In the Matter of:

A.J. Boggs & Company

Petitioner

Trademark: 911.NET

Registration No. 2551269

v.

Cancellation No. 040559

General Electric Capital Corporation  
Intrado Inc.

Registrant

Trademark Trial and Appeal Board  
Assistant Commissioner of Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3513

03 MAR -4 AM 9:30

**Second Motion to Quash Notice of Testimonial Deposition**

Now comes, Gordon E. R. Troy, Esq. of the firm Gordon E. R. Troy, PC, attorney for Registrant, seeking its **Second Motion to Quash Notice of Testimonial Deposition**. Registrant states the following factual background:

1. Registrant restates and realleges the factual background as stated in its Combined Motion for: Quash Notices of Testimony Deposition, Reset Testimony and Briefing Schedule, Change name of Registrant in Caption, Establish Single Service Address for Plaintiff and Request for Telephone Conference filed with the Trademark Trial and Appeal Board on February 14, 2003.
2. On February 20, 2003 (4:59pm), Petitioner served via facsimile yet another Notice for a Testimonial Deposition to be taken in Lansing Michigan. (Facsimile Transmission of Notice is attached hereto as Exhibit 1.) Petitioner's counsel did not

telephone or otherwise correspond with Counsel for Registrant in advance of the notice. Actual proper service of said motion has not yet been properly effectuated.

3. The notice is again made without reasonable notice to Registrant's Counsel. Service of a notice by facsimile, two business days before the taking of testimony in a different city is hardly reasonable under any circumstances.
4. With respect to Registrant's Combined Motion for: Quash Notices of Testimony Deposition, Reset Testimony and Briefing Schedule, Change name of Registrant in Caption, Establish Single Service Address for Plaintiff and Request for Telephone Conference, Registrant advises the Trademark Trial and Appeal Board that it finally received proper service of the Testimonial Notices on Tuesday February 18 2003, the day that the testimonial depositions were to be taken.
5. Attached hereto as Exhibit 2 is a copy of the tracking page for ET680077532US demonstrating that the Notice of Testimonial Deposition has not even left Michigan as of February 21, 2003, and therefore has not been properly served upon Registrant's Counsel.
6. Petitioner's counsel telephoned the Trademark Trial and Appeal Board to schedule a telephone conference with the Interlocutory Attorney assigned to the within proceeding and learned that the Interlocutory Attorney is on vacation until early March.

#### **Quash Notice of Testimony Deposition**

7. Petitioner has not effectively served Notice of the Testimony Deposition.

A party filing a paper in a Board inter partes proceeding may always, as a courtesy, send a copy of the paper to an adverse party by telephonic facsimile transmission ("fax"). However, transmission of the paper by fax does not constitute "service" thereof under the provisions of 37 CFR 2.119. Notwithstanding the fax transmission, the paper must still be served upon the adverse party by one of the methods specified in 37 CFR 2.119(b), and the date of service of the paper upon the adverse party is the date when service is made by one of those specified methods.

TBMP 113.04

8. As of this date, February 21, 2003, Petitioner has not properly served Registrant with the Notice of Testimonial Deposition.
9. Petitioner has not given Registrant reasonable notice of the Testimony Deposition.
10. Petitioner's scheduling of Testimony Depositions as it has done would have required Registrant's Counsel to take two airplane trips to Michigan in order to accommodate these depositions scheduled without consent or conference a week apart. Clearly, Petitioner is seeking to harass Registrant rather than comporting itself in a proper manner and pursuant to the rules of the Trademark Office.
11. Petitioner's Counsel is not available to attend the testimony deposition improperly noticed for February 24, 2003 due to prior commitments.
12. Still outstanding are Registrant's Motion to Compel Discovery and Registrant's Combined Motion. Registrant respectfully requests that the Board consider and rule upon Registrant's pending motions as well as the within motion before this case proceeds. Registrant's Counsel states that as of this date, it has not received "Petitioner's Response to Registrant's Motion to Compel" even though Petitioner indicated in its cover letter of February 12, 2003 that it was included.
13. Finally, Registrant maintains that the actions taken by Petitioner call for sanctions in the circumstances, and respectfully requests that the Board consider appropriate sanctions for Petitioner's conduct.

#### **EXPRESS MAILING CERTIFICATION**

"Express Mail" mailing label number : EV098570477US

Date of Deposit : February 21, 2003

I hereby certify that this Second Motion to Quash Notice of Testimonial Deposition and any attachments are being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. §1.10 on the date indicated above and is addressed to the Assistant Commissioner of Trademarks 2900 Crystal Drive Arlington, VA 22202-3513.

**Certificate of Service**

The undersigned hereby certifies that a copy of the foregoing Second Motion to Quash Notice of Testimonial Deposition and attachments has been served on counsel for Petitioner by depositing same with the United States Postal Service with sufficient postage as both express mail and first-class mail in envelopes addressed to:

TTAB Correspondence Address on File for Petitioner: (Express Mail EV098570494US)

Jeffrey A. Sadowski, Esq.  
Howard & Howard Attorneys, PC  
4265 Okemos Rd Ste D  
Okemos, MI 48864-3285

Address indicated on Notices of Testimonial Deposition: (Express Mail EV098570503US)

Jeffrey A. Sadowski, Esq.  
Howard & Howard Attorneys, PC  
39400 Woodward Avenue, Suite 101  
Bloomfield, Hills, MI 48304-5151

on February 21, 2003

A courtesy copy of the foregoing Second Motion to Quash Notice of Testimonial Deposition and attachments has been served on counsel for Petitioner by facsimile transmission to (517) 485-1568.

Respectfully submitted:  
GORDON E. R. TROY, PC

By: 

Gordon E. R. Troy  
*Attorney for Registrant*  
PO Box 368  
Charlotte, VT 05445  
(802) 425-9060 Phone  
(802) 425-9061 Fax

**In The United States Patent and Trademark Office  
Trademark Trial and Appeal Board**

Our Ref: 1092-029.001

In the Matter of:

-----

A.J. Boggs & Company

Petitioner

Trademark: 911.NET

Registration No. 2551269

v.

Cancellation No. 040559

General Electric Capital Corporation  
Intrado Inc.

Registrant

-----

Trademark Trial and Appeal Board  
Assistant Commissioner of Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3513

**Second Motion to Quash Notice of Testimonial Deposition**

**Exhibit 1**

# Howard & Howard

law for business

## FACSIMILE TRANSMITTAL SHEET

This communication is confidential and intended only for the addressee. Any distribution or duplication of this communication is prohibited. If this facsimile was not intended for you, please telephone us immediately so that we can arrange for its return at our expense.

TO:

Gordon E. Troy, Esq.

FROM:

Brian D. Hemmington, Esq.

COMPANY:

DATE:

02/20/03

FAX NUMBER:

(802) 425-9061

TOTAL NO. OF PAGES INCLUDING COVER:

3

PHONE NUMBER:

(802) 425-9060

SENDER'S TELEPHONE NUMBER:

(517) 377-0619

CLIENT NUMBER:

60107-24

SENDER'S FAX NUMBER:

(517) 485-1568

RE:

A.J. Boggs &amp; Company v. General Electric Capital Corporation Intrado, Inc.

☐ URGENT☐ FOR REVIEW☐ PLEASE COMMENT☐ PLEASE REPLY☐ PLEASE RECYCLE

NOTES/COMMENTS:

HOWARD & HOWARD ATTORNEYS, P.C.  
THE PHOENIX BUILDING, SUITE 500  
222 NORTH WASHINGTON SQUARE  
LANSING, MICHIGAN 48933-1817

**In The United States Patent and Trademark Office  
Trademark Trial and Appeal Board**

In the Matter of:

---

**A.J. Boggs & Company**

Petitioner

v.

**General Electric Capital Corporation  
Intrado, Inc.**

Registrant

---

Trademark: 911.NET

Registration No. 2551269

Cancellation No. 040559

**Notice of Testimonial Deposition**

**To: Gordon E. Troy  
Attorney for registrant  
333 Lake Road  
PO Box 368  
Charlotte, VT 05445**

PLEASE TAKE NOTICE that pursuant to Rule 2.123, 37 C.F.R. §2.123, and the Federal Rules of Civil Procedure, Petitioner's attorney, Howard & Howard Attorneys, P.C., will take the testimonial deposition on oral examination of:

**Russell Lahti  
4265 Okemos Rd., Suite D  
Okemos, MI 48864**

upon oath and before a notary public or other duly authorized officer authorized to administer oaths at the offices of Howard & Howard Attorneys, P.C. located at 222 N.

**Howard & Howard**  
Attorneys

One North Main  
Suite 400  
101 North Main Street  
Ann Arbor, MI 48104-1473  
734.222.1403

The Plymouth Office Center  
Suite 101  
39400 Woodward Avenue  
Warrenfield Hills, MI 48090-5151  
588.662.1403

The Michigan Building  
Suite 200  
100 Penning Street  
Kalamazoo, MI 49007-4006  
269.382.1403

The Phoenix Building  
Suite 300  
222 North Washington Square  
Lansing, MI 48203-1817  
517.485.1403

One Technology Plaza  
Suite 600  
211 Fulton Street  
Peoria, IL 61602-1350  
309.672.1403

Washington Square, Lansing, Michigan 48933 commencing on February 24, 2003 at 10:00AM.

You are invited to attend to cross-examine.

Respectfully submitted,  
HOWARD AND HOWARD ATTORNEYS, P.C.

Date: February 20, 2003

By: 

Jeffrey A. Sadowski, Esq.  
Brian D. Herrington, Esq.  
Melinda B. Buurma, Esq.  
Attorneys for Petitioner  
39400 Woodward Avenue, Suite 101  
Bloomfield Hills, Michigan 48304-5151  
Phone: (248) 645-1483  
Fax: (248) 645-1568

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above by Express Mail (overnight delivery - Express Mail No. ET680077532US) at their respective business addresses (P.O. Box 368 Charlotte, VT 05445) with postage fully prepaid as well as faxed and E-mailed to same on February 20, 2003. Further, that a copy of the foregoing instrument was mailed to the United States Patent and Trademark Office by first class mail, postage fully paid, on February 20, 2003.

Peggy A. Grant



**In The United States Patent and Trademark Office  
Trademark Trial and Appeal Board**

Our Ref: 1092-029.001

In the Matter of:

-----  
A.J. Boggs & Company

Petitioner

Trademark: 911.NET

Registration No. 2551269

v.

Cancellation No. 040559

General Electric Capital Corporation  
Intrado Inc.

Registrant  
-----

Trademark Trial and Appeal Board  
Assistant Commissioner of Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3513

**Second Motion to Quash Notice of Testimonial Deposition**

**Exhibit 2**



## Track & Confirm

### Shipment History

You entered ET68 0077 532U S

Your item was processed and left our GRAND RAPIDS, MI facility on February 20, 2003. Status is updated every evening. Please check again later.

Here is what happened earlier:

- ENROUTE, February 20, 2003, 6:33 pm, LANSING, MI 48924
- ACCEPTANCE, February 20, 2003, 4:26 pm, LANSING, MI 48901

### Track & Confirm

Enter label number:

[Track & Confirm FAQs](#)



POSTAL INSPECTORS  
Preserving the Trust

[site map](#) [contact us](#) [government services](#)  
Copyright © 1999-2002 USPS. All Rights Reserved. [Terms of Use](#) [Privacy Policy](#)

# GORDON E. R. TROY, PC

802 425-9060  
802 425-9061 Fax  
GTROY@WEBTM.COM  
<http://www.webtm.com>

Attorney at Law  
3333 Lake Road  
PO Box 368  
Charlotte, VT 05445

Admitted in:  
Vermont, Illinois,  
New York, and  
District of Columbia

*Practice Exclusively in the area of Intellectual Property Law  
and Information Technology Matters*

February 21, 2003

Assistant Commissioner of Trademarks  
Trademark Trial and Appeal Board  
2900 Crystal Drive  
Arlington, VA 22202-3513

Re: A.J. Boggs & Company v. General Electric Capital Corporation  
Trademark: 911.NET  
Registration No. 2551269  
Cancellation No. 040559  
Our Ref : 1092-029.001

Dear Assistant Commissioner:

Kindly acknowledge and confirm receipt of the enclosed  
**Second Motion to Quash Notice of Testimonial Deposition**  
by stamping and returning the self addressed stamped post card.

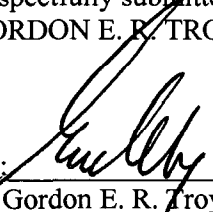
## EXPRESS MAILING CERTIFICATION

"Express Mail" mailing label number : EV098570477US

Date of Deposit : February 21, 2003

I hereby certify that the attached/enclosed are being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. §1.10 on the date indicated above and is addressed to the Assistant Commissioner of Trademarks 2900 Crystal Drive Arlington, VA 22202-3513.

Respectfully submitted,  
GORDON E. R. TROY, PC

By:   
Gordon E. R. Troy, Esq.  
Attorney for Registrant